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BEFORE THE FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

In the Matter of )  
 )  
MUR 6274 )  
COMMITTEE TO ELECT MATT )  
MILLER AND MATT MILLER, )  
AS TREASURER )

2010 JUN 22 A 10: 20

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

**SENSITIVE**

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated \_\_\_\_\_  
\_\_\_\_\_ are

forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6274 as a low-rated matter.

In this matter, the complainant, Jason Wise, states that the Committee to Elect Matt Miller and Matt Miller, in his official capacity as treasurer ("the Committee"), violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by allegedly including defective disclaimers on its "billboards, yard signs, and mail pieces" during Mr. Miller's 2010 campaign for Congress.<sup>1</sup> First, the complainant asserts that Committee violated 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2) by failing to surround its disclaimers with clearly defined printed boxes. Second, according to the complainant, the Committee "knowingly and willfully printed false" disclaimers on some of its campaign materials by identifying Don Eiserling, as its treasurer despite the fact that Mr. Eiserling "has not been Treasurer since 7/13/07."<sup>2</sup> The relevant campaign materials, as reflected in attachments to the complaint, include a billboard with the following disclaimer: "Paid for by the Committee to Elect Matt Miller," a yard sign bearing the disclaimer "Paid for

<sup>1</sup> Mr. Miller was an unsuccessful candidate for Congress from Ohio's 16<sup>th</sup> Congressional District.  
<sup>2</sup> On that date, Mr. Miller filed an amended Statement of Organization listing himself as his Committee's treasurer.

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1 by the Committee to Elect Matt Miller, Don Eiserling, Treasurer" and what appears to be a  
2 leaflet with the disclaimer "Paid for by the Committee to Elect Matt Miller, Nancy V. Matia,  
3 Honorary Chairwoman," which is printed in white lettering on a blue background but is not  
4 enclosed within a printed box.

5 Mr. Miller, who responded on behalf of his Committee, states that he was unaware of a  
6 requirement that disclaimers on his campaign materials should have been enclosed in a "clearly  
7 defined box." Further, Mr. Miller offers that he had used the same designs during two prior  
8 congressional races without receiving any complaints; he had not retained an attorney or  
9 campaign finance expert because his campaign budget was limited; and the yard signs and  
10 leaflets contained, as identifying material, the name of his campaign and its address. As for the  
11 inclusion of "Don Eiserling, Treasurer" on his campaign yard signs, Mr. Miller explains that  
12 Mr. Eiserling, the Committee's former treasurer, had died during the previous campaign, and  
13 that the Committee had used leftover material bearing Mr. Eiserling's name for a short period of  
14 time prior to the May 4, 2010 primary, in order to save money. Finally, Mr. Miller asserts that  
15 all "incorrect" material will be "collected and removed" expeditiously.

16 As Mr. Miller acknowledges, some of his Committee's yard signs include outdated  
17 information, in that they display the name of its deceased former treasurer. In addition, while  
18 outdoor advertising facilities such as billboards and yard signs are not required to display  
19 printed boxes around their disclaimers, to the extent that the Miller campaign leaflets were  
20 required to include disclaimers, the disclaimers should have been enclosed in clearly defined  
21 boxes. 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c)(2).

22 In light of the technical nature of the alleged violations, coupled with the  
23 acknowledgment by the candidate and his plan for remedial action, and in furtherance of the  
24 Commission's priorities and resources, relative to other matters pending on the Enforcement

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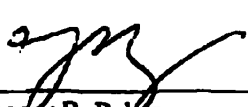
1 docket, the Office of General Counsel believes that the Commission should exercise its  
2 prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).  
3 Additionally, this Office intends on reminding the Committee to Elect Matt Miller and Matt  
4 Miller, in his official capacity as treasurer, of the requirements under 2 U.S.C. § 441d and  
5 11 C.F.R. § 110.11 concerning the use of appropriate disclaimers.

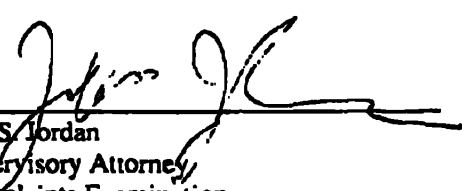
6 **RECOMMENDATIONS**


7 The Office of General Counsel recommends that the Commission dismiss MUR 6274,  
8 close the file, and approve the appropriate letters. Additionally, this Office recommends  
9 reminding the Committee to Elect Matt Miller and Matt Miller, in his official capacity as  
10 treasurer, of the requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11 concerning the use  
11 of appropriate disclaimers.

12 Thomasenia P. Duncan  
13 General Counsel  
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16  
17 10/22/10  
18 Date

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20  
21 BY:   
22 Gregory R. Baker  
23 Special Counsel  
24 Complaints Examination  
25 & Legal Administration

26  
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28 Jeff S. Jordan  
29 Supervisory Attorney  
30 Complaints Examination  
31 & Legal Administration  
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Ruth Heilize  
Attorney  
Complaints Examination  
& Legal Administration

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